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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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LEONARD A. HASKIN,) No. C 08-2226 CW (PR)
Plaintiff,) ORDER OF SERVICE
v.)
ROBERT AYERS, JR., et al.,)
Defendants.)
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INTRODUCTION

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This case was commenced when Plaintiff, a prisoner at San Quentin State Prison (SQSP), filed a document captioned "Petition For A Writ of Habeas Corpus." Plaintiff alleged that he has been subjected to "neglectful medical conditions . . . with deliberate indifference to [his] U.S. Constitution Eighth Amendment rights to be free from cruel and unusual punishment." (Pet. at 8.)

In an Order dated July 8, 2008, the Court conducted a preliminary review of the petition. The Court determined that the petition did not attempt to challenge either the fact of Plaintiff's conviction or the length of his sentence. Rather, it was based entirely on the conditions of his confinement. Because the Court found that a federal habeas petition was not the proper way to raise such claims, Plaintiff was directed to file a civil rights complaint stating his claims for relief with specificity if he wished to go forward with this action as a civil rights action. The Court granted Plaintiff leave to file a civil rights complaint within thirty days and informed him that if he failed to do so this

1 action would be dismissed without prejudice.

2 On July 28, 2008, Plaintiff filed a civil rights complaint
3 alleging that Defendants were deliberately indifferent to his
4 serious medical needs and violated his Fourteenth Amendment rights
5 to equal protection. He has also filed a motion for leave to
6 proceed in forma pauperis.

7 Plaintiff names the following Defendants: SQSP Warden Robert
8 L. Ayers; SQSP Chief Physician Williams; SQSP Physicians Martin,
9 Wilson, Bui and Udenhi; SQSP Neurologists Capozoli and Mendius;
10 SQSP Urologist Gershbein; SQSP Sergeant Ngyen; and SQSP
11 Correctional Officer Perry. Plaintiff seeks monetary damages.

12 Venue is proper because the events giving rise to the claim
13 are alleged to have occurred at SQSP, which is located in this
14 judicial district. See 28 U.S.C. § 1391(b).

15 DISCUSSION

16 I. Standard of Review

17 A federal court must conduct a preliminary screening in any
18 case in which a prisoner seeks redress from a governmental entity
19 or officer or employee of a governmental entity. 28 U.S.C.
20 § 1915A(a). In its review, the court must identify any cognizable
21 claims and dismiss any claims that are frivolous, malicious, fail
22 to state a claim upon which relief may be granted or seek monetary
23 relief from a defendant who is immune from such relief. Id.
24 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
25 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
26 1988).

27 To state a claim under 42 U.S.C. § 1983, a plaintiff must
28 allege two essential elements: (1) that a right secured by the

1 Constitution or laws of the United States was violated, and
2 (2) that the alleged violation was committed by a person acting
3 under the color of state law. West v. Atkins, 487 U.S. 42, 48
4 (1988).

5 II. Legal Claims

6 A. Eighth Amendment Deliberate Indifference Claim

7 Deliberate indifference to serious medical needs violates the
8 Eighth Amendment's proscription against cruel and unusual
9 punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);
10 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled
11 on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
12 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771
13 (9th Cir. 1986). A determination of "deliberate indifference"
14 involves an examination of two elements: the seriousness of the
15 prisoner's medical need and the nature of the defendant's response
16 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical
17 need exists if the failure to treat a prisoner's condition could
18 result in further significant injury or the "unnecessary and wanton
19 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at
20 104). A prison official is deliberately indifferent if he knows
21 that a prisoner faces a substantial risk of serious harm and
22 disregards that risk by failing to take reasonable steps to abate
23 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

24 Plaintiff's allegations that he suffers from Spinal Arthritic
25 Disc Degeneration and urological problems, support an inference
26 that he suffers from serious medical needs. Liberally construed,
27 Plaintiff's allegations that SQSP medical staff failed to provide
28 adequate medical treatment for his illness from 2003 through 2008

1 state a cognizable deliberate indifference claim against Defendants
2 Ayers, Williams, Martin, Wilson, Bui, Udenhi, Capozoli, Mendius,
3 Gershbein, Ngyen, and Perry. Accordingly, this claim may proceed
4 against these Defendants.

5 B. Fourteenth Amendment Equal Protection Claim

6 The Equal Protection Clause of the Fourteenth Amendment
7 commands that no State shall 'deny to any person within its
8 jurisdiction the equal protection of the laws,' which is
9 essentially a direction that all persons similarly situated should
10 be treated alike." City of Cleburne v. Cleburne Living Center, 473
11 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216
12 (1982)).

13 To state a claim for relief under the Equal Protection Clause,
14 a plaintiff must allege that the defendant acted at least in part
15 because of the plaintiff's membership in a protected class. See
16 Serrano v. Francis, 345 F.3d 1071, 1081-82 (9th Cir. 2003). Proof
17 of a discriminatory intent or purpose is also required. City of
18 Cuyahoga Falls, Ohio v. Buckeye Cnty. Hope Found., 538 U.S. 188,
19 194 (2003). In the prison context, an allegedly discriminatory
20 prison regulation or practice is valid as long as it is "reasonably
21 related to legitimate penological interests." Turner v. Safley,
22 482 U.S. 78, 89 (1987).

23 Here, Plaintiff makes the conclusory allegation that SQSP
24 medical staff "are apparent in their omissions to act and provide
25 [him] with adequate medical care and treatment," in violation of
26 his "Fourteenth Amendment Right assuring Equal Protection" The
27 Court finds that Plaintiff does not state a cognizable equal
28 protection claim against Defendants. Accordingly, Plaintiff's

1 equal protection claim is DISMISSED WITH LEAVE TO AMEND. Plaintiff
2 may reassert his equal protection claim by filing an amended claim
3 if he can allege in good faith, and by citing actual examples which
4 are subject to proof, that Defendants were deliberately indifferent
5 to his serious medical needs but not to the medical needs of other
6 similarly situated prisoners of other races.

7 CONCLUSION

8 For the foregoing reasons, the Court orders as follows:

9 1. Plaintiff's application for in forma pauperis status
10 (docket no. 9) is GRANTED.

11 2. Plaintiff states a cognizable Eighth Amendment claim for
12 deliberate indifference to serious medical needs against Defendants
13 Ayers, Williams, Martin, Wilson, Bui, Udenhi, Capozoli, Mendius,
14 Gershbein, Ngyen, and Perry.

15 3. Plaintiff's Fourteenth Amendment equal protection claim
16 is DISMISSED WITH LEAVE TO AMEND.

17 4. Within thirty (30) days of the date of this Order
18 Plaintiff may file an amendment to the complaint with his amended
19 equal protection claim as set forth above in Section II(B) of this
20 Order. (Plaintiff shall resubmit only that claim and not the
21 entire complaint.) The failure to do so will result in the
22 dismissal without prejudice of his equal protection claim.

23 5. The Clerk of the Court shall mail a Notice of Lawsuit and
24 Request for Waiver of Service of Summons, two copies of the Waiver
25 of Service of Summons, a copy of the amended complaint and all
26 attachments thereto (docket no. 7) and a copy of this Order to SOSP
27 Warden Robert L. Ayers; SOSP Chief Physician Williams; SOSP
28 Physicians Martin, Wilson, Bui and Udenhi; SOSP Neurologists

1 Capozoli and Mendius; SOSP Urologist Gershbein; SOSP Sergeant
2 Nqyen; and SQSP Correctional Officer Perry. The Clerk of the Court
3 shall also mail a copy of the complaint and a copy of this Order to
4 the State Attorney General's Office in San Francisco.
5 Additionally, the Clerk shall mail a copy of this Order to
6 Plaintiff.

7 6. Defendants are cautioned that Rule 4 of the Federal Rules
8 of Civil Procedure requires them to cooperate in saving unnecessary
9 costs of service of the summons and complaint. Pursuant to Rule 4,
10 if Defendants, after being notified of this action and asked by the
11 Court, on behalf of Plaintiff, to waive service of the summons,
12 fail to do so, they will be required to bear the cost of such
13 service unless good cause be shown for their failure to sign and
14 return the waiver form. If service is waived, this action will
15 proceed as if Defendants had been served on the date that the
16 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
17 Defendants will not be required to serve and file an answer before
18 sixty (60) days from the date on which the request for waiver was
19 sent. (This allows a longer time to respond than would be required
20 if formal service of summons is necessary.) Defendants are asked
21 to read the statement set forth at the foot of the waiver form that
22 more completely describes the duties of the parties with regard to
23 waiver of service of the summons. If service is waived after the
24 date provided in the Notice but before Defendants have been
25 personally served, the Answer shall be due sixty (60) days from the
26 date on which the request for waiver was sent or twenty (20) days
27 from the date the waiver form is filed, whichever is later.

28 7. Defendants shall answer the complaint in accordance with

1 the Federal Rules of Civil Procedure. The following briefing
2 schedule shall govern dispositive motions in this action:

3 a. No later than ninety (90) days from the date their
4 answer is due, Defendants shall file a motion for summary judgment
5 or other dispositive motion. The motion shall be supported by
6 adequate factual documentation and shall conform in all respects to
7 Federal Rule of Civil Procedure 56. If Defendants are of the
8 opinion that this case cannot be resolved by summary judgment, they
9 shall so inform the Court prior to the date the summary judgment
10 motion is due. All papers filed with the Court shall be promptly
11 served on Plaintiff.

12 b. Plaintiff's opposition to the dispositive motion
13 shall be filed with the Court and served on Defendants no later
14 than sixty (60) days after the date on which Defendants' motion is
15 filed. The Ninth Circuit has held that the following notice should
16 be given to pro se plaintiffs facing a summary judgment motion:

17 The defendant has made a motion for summary
18 judgment by which they seek to have your case dismissed.
19 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

20 Rule 56 tells you what you must do in order to
21 oppose a motion for summary judgment. Generally, summary
22 judgment must be granted when there is no genuine issue
23 of material fact -- that is, if there is no real dispute
about any fact that would affect the result of your case,
the party who asked for summary judgment is entitled to
judgment as a matter of law, which will end your case.
When a party you are suing makes a motion for summary
judgment that is properly supported by declarations (or
other sworn testimony), you cannot simply rely on what
your complaint says. Instead, you must set out specific
facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided
in Rule 56(e), that contradict the facts shown in the
defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If
you do not submit your own evidence in opposition,

1 summary judgment, if appropriate, may be entered against
2 you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

3 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
4 banc).

5 Plaintiff is advised to read Rule 56 of the Federal Rules of
6 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
7 (party opposing summary judgment must come forward with evidence
8 showing triable issues of material fact on every essential element
9 of his claim). Plaintiff is cautioned that because he bears the
10 burden of proving his allegations in this case, he must be prepared
11 to produce evidence in support of those allegations when he files
12 his opposition to Defendants' dispositive motion. Such evidence
13 may include sworn declarations from himself and other witnesses to
14 the incident, and copies of documents authenticated by sworn
15 declaration. Plaintiff will not be able to avoid summary judgment
16 simply by repeating the allegations of his complaint.

17 c. If Defendants wish to file a reply brief, they shall
18 do so no later than thirty (30) days after the date Plaintiff's
19 opposition is filed.

20 d. The motion shall be deemed submitted as of the date
21 the reply brief is due. No hearing will be held on the motion
22 unless the Court so orders at a later date.

23 8. Discovery may be taken in this action in accordance with
24 the Federal Rules of Civil Procedure. Leave of the Court pursuant
25 to Rule 30(a)(2) is hereby granted to Defendants to depose
26 Plaintiff and any other necessary witnesses confined in prison.

27 9. All communications by Plaintiff with the Court must be
28 served on Defendants, or Defendants' counsel once counsel has been

1 designated, by mailing a true copy of the document to Defendants or
2 Defendants' counsel.

3 10. It is Plaintiff's responsibility to prosecute this case.
4 Plaintiff must keep the Court informed of any change of address and
5 must comply with the Court's orders in a timely fashion.

6 11. Extensions of time are not favored, though reasonable
7 extensions will be granted. Any motion for an extension of time
8 must be filed no later than fifteen (15) days prior to the deadline
9 sought to be extended.

10 IT IS SO ORDERED.

12 | DATED: 12/31/09

**CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE**

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LEONARD A HASKINS,

Case Number: CV08-02226 CW

Plaintiff,

CERTIFICATE OF SERVICE

V.

ROBERT AYERS JR et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 31, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leonard A. Haskins B96040
San Quentin State Prison
San Quentin, CA 94964

Dated: December 31, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk